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*The Honourable the Senate and House of Representatives of the Commonwealth of Pennsylvania,*

## THE MEMORIAL

Of Wilhem Willink, Hendrick Vollenhoven, and Rutger Jan Schimmelpenninck,

RESPECTFULLY SHOWETH,

THAT previous to the year 1791, they associated with Nicolaas Van Staphorst, Pieter Stadnitski, and Christiaan Van Eghen, who are since dead, and were known by the name of the HOLLAND COMPANY; this was a friendly and private association of your memorialists, then and yet being foreigners, citizens of Amsterdam, in Holland.

Having acquired (we may presume to say, in a course of honourable industry) considerable estates, and perceiving great troubles about to come upon our country, a natural sentiment inclined us to place a part, at least, of our property, beyond the vicissitudes of civil dissensions and revolutionary government. Attached as we were to the cause of liberty in Holland, with this view we turned our thoughts to America, confidently believing, that whatever was precious to us in interest or affection, would be best secured among a virtuous people, whose government was republican, and whose justice was fixed by a constitutional and supreme administration of standing laws; a people too, whom we had contributed to assist by pecuniary aid in their contest for freedom. Thus influenced, our then agent, Mr. Cazenove, became the purchaser, for our account, of 1162 warrants for land of 400 acres each, lying north and west of the rivers Ohio and Alleghany and

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west of the Conewango creek, and surveyed in districts Nos. 1, 2, 3, 6, and 7. These warrants, duly issued, were all dated between April 1792 and August 1793, amounting in acres to 464,800. For these lands, rated by law at 20 dollars per hundred acres, we had paid in August 1793 to the state of Pennsylvania, from whom the purchase was made, the full consideration money, being 92,960 dollars and 82 cents: also the land-office fees, amounting to 4,802 dollars, and for patents the further sum of 14,651 dollars and 31 cents: and between the years 1794 and the 5th March 1802, we had expended on account of these tracts—for building mills and stores, opening roads, furnishing supplies, &c. and the general objects of settlement, the sum of 330,755 dollars and 5 cents, composing a gross sum of *actual cost* to us in money, on the 5th of March 1802, of 443,169 dollars and eighteen cents.

Since which time to the present, our additional expenditure on account of those lands will increase the mere *principal* in money paid by us, to a sum not far short of 500,000 dollars. This, however, does not present the whole cost of the purchase and settlement; for of the 1162 tracts thus purchased from the state and paid for, we sustained a loss of no less than 386, or 154,400 acres of land out of the 464,800 contained in the 1162 warrants.

This resulted from prior occupancies, resurveys, and lands we were obliged to *give* as bounties to procure settlers under the law of 1792.

We have then left but 310,400 acres to look to for the reimbursement of near half a million of dollars taken from the very capital of our private fortunes. If is added to this (what to say the best of it would be a poor remuneration for our money and trouble) the *legal interest* of six per cent. reckoned from the advances as made, these lands now so reduced in quantity, and sunk in value by reason of injurious claims and intrusions, will have cost us almost a *million* of dollars!

Of these 310,400 acres, owing to the causes above alluded to, not more than 45,000 acres have been sold,

and these at most reduced prices; and nigh all of the consideration, even of these sales have for years remained unpaid, and the whole of its interest; the inability to pay also arising out of the impoverishment of the country from disputes engendered by speculators under the name of actual settlers, and other pretences affecting the title of the warrantees and those holding under them.

Thus have your memorialists, within seventeen years, paid into the treasury and land-office of this state, upwards of 112,000 dollars, the full price of the land as fixed by law; they have in the same time expended nigh 400,000 dollars upon the cultivation of a desert, having never ceased from the moment of procuring their warrants to this day, by unremitting labours and unbounded liberality, not merely to comply in form, but *substantially* to attain, and even exceed all that the *policy* of the law of 1792, now so unkindly meant to be turned against them, had in view by its conditions of settlement.

What then, if it were true, that upon each tract and within the exact time, our intentions and efforts had failed of procuring a particular settlement, from causes and circumstances too, not under our control; have we not done more and better than the most sanguine calculations ever foretold? A mere needy settler on each tract would have been nothing to the state in comparison to the mass of our improvements, and the wealth we poured into that country. In the place of the savage and the beast, we have given to Pennsylvania an extended population, and a productive land: Useful citizens, progressive arts, domestic comforts, and increasing riches are diffused over nigh a million of acres; which, but for the exhaustion of our fortunes and labours, and those of the other warrantees implicated in this bill, would, at this moment, like the counties adjoining upon the east, have exhibited only a sterile wilderness. During all this time it is our just right to aver, that we have injured no man, nor violated intentionally the least of our engagements; even those who, seizing on the pretext of forfeiture, and our condition as foreigners, in order to speculate upon our fears or misfortunes, had in-

vaded these possessions, so dearly bought, affecting to call themselves actual settlers, because of our supposed *non-settlement* of certain tracts, even they acknowledge not only our justice but our kindness: Your memorialists indeed never could sanction their pretensions, and often perceived that their motives merely pointed to exaction; yet have we satisfied even *their* demands; scarcely a single person, holding in opposition to our rights, now resides upon the tracts purchased by your memorialists; how many of these claims have been quieted, how much it has cost us in the course of fourteen years to extinguish them, it is unnecessary to ascertain: suffice it to say that our great object has been *peace*, and to arrive at that point where these pretensions, however ill founded or unjust, as most assuredly they are, should cease to keep our lands a longer burthen upon us, and even less useful to the community by suspended litigation. Though foreigners, labouring under many disadvantages from our unacquaintance with the laws, customs and opinions which prevail in this country, yet we confidently appeal to the common sentiment of Pennsylvanians for the standard of our conduct, and the rectitude of our dealings. The people of Pennsylvania could have imputed to us no fault, unless it was a crime to possess wealth, and to have lavished it with unbounded profusion in continued efforts for nigh 20 years, to populate and improve their country. We say nothing in this place of the difficulties and anxieties sustained by us, growing out of juridical perplexities, litigious passions, and the secret method by which certain persons of influence keep alive a spirit of discontent and obstinacy among a few of the yet unsatisfied settlers,—persons who have bought up many of these pretended rights, and are now at Lancaster, pretending to advocate for settlers, and get a law favourable to their own views. Happy indeed would it be for Pennsylvania, and greatly to the benefit of those who are fair settlers, and are seeking, by state laws and coercion, to *force* from us our possessions, if *those* they most depend upon, had used their influence to heal instead of opening the



wounds of controversy: instead of erecting jurisdictions and laying out plans of prosecution and force, had met the warrantees in the spirit of accommodation: if this had been their course, your memorialists can venture to assert, that the country would at this moment have been in peace, and the complaints of *actual settlers* (so called) long ago removed. In regard however, to your *memorialists*, having well nigh extinguished every pretension of whatever kind, and having, in 1805, obtained a confirmation of our title in the supreme court of the United States, we had begun to console ourselves that no new claims would be revived, but that we should be left undisturbed in future exertions to settle the country, and convert the poor pittance of our remaining possessions to some small account: we say small account, for without another hindrance, and every cloud over our title removed, these lands which have cost us in principal and interest, near a million of dollars, will not produce to us, under the most favourable circumstances of sale, one third of that amount. Cheerfully indeed would we resign it after all our payments to the state, all our expenditures and improvements, and all our cares and exertions, for only *three-fifths* of the neat 500,000 dollars it has cost us, sinking thereby the whole interest, and two-fifths of the capital of our advances!

We thought it due to ourselves, and to the legislature of Pennsylvania, to make this representation; we pledge ourselves for its accuracy, and are ready to produce exact and authentic vouchers for all these expenditures; and yet this is the purchase which ignorance, misguided by imposture, has denominated an "enormous speculation," a monopoly by rich foreigners, to the exclusion of *poorer* men who would have *actually* settled these lands. We need not remark upon these unworthy means to raise a prejudice to our rights: the *facts*, as they regard the *profit* of this contract with the state, are now before the legislature and the people; it is easy to decide, if that were the question, who is the *meritorious sufferer*; he who purchased and has expended thousands to people and improve a wilderness; or he who

lies by for seventeen years after the toil and expense is bestowed, and private fortune exhausted, comes to wrest it from the proprietor, by an entry and claim under pretext of a catching forfeiture. This statement, and these remarks seemed to your memorialists a necessary introduction to the important purposes of this address to your honourable body.

In these circumstances of our property, and just beginning, as above remarked, to enjoy the hope of some small reimbursement for such an immense cost, by a quiet sale and settlement of what remains; we casually learned that a *bill* is reported by an honourable committee of the legislature, intended, not only to *aid* persons who had *settled on particular tracts*, upon the ground, that the title of the warrantee was devested by some original conditions of settlement; but *also* organizing a court, and making provisions, whereby the *state of Pennsylvania itself* is to become our adversary, and to lay claim, under this new pretension, to all those tracts *not yet entered upon* or held against us by particular settlers.

We had, indeed, considered our grievances on the score of defending ourselves against the individuals coming in upon us, under an idea of forfeiture and vacancy of the land, as sufficiently afflicting. With most of them, settlements have been made, not indeed, on the score of right or justice, (for they came knowing our claims, and choosing controversy) but to *buy peace*, as the cheaper course: those *particular* claimants are reduced to a small number, even throughout the whole district; and a short bill passed by your honourable house, enabling compromises, and confirming the title of the warrantees, as against the state (if indeed it is necessary,) would, as your memorialists confidently believe, lead to a satisfactory adjustment of remaining controversies between original warrantees, and persons who claim by vacating warrants or otherwise: and thus in the course of six months, justice be done, tranquillity restored, and

prosperity once more smile upon this extensive country.

That a bill of this kind, to compromise remaining controversies, should have been introduced by the friends of those who profess to support actual settlers, (though surely every step they take to further involve the warrantees in controversy must prove fatal to the hopes of such settlers,) would not have been unexpected, nor the *principle* disapproved of by your memorialists; they indeed wish it, and in that respect are the true friends of such settlers. But to perceive a bill brought forward, the leading provisions of which go not to enable compromises, and establish peace, but to mature a court, in which the *state* is to take the ground of settlers, and set up in their *own right*, a reclamation of the property purchased by the warrantees seventeen years ago, under "*an opinion entertained*," as is expressed in the preamble, that they have not performed the conditions of settlement, is a measure so unlooked for, and tends so directly to destroy every hope of selling and settling our lands for years to come, as well as all further compromises with settlers, that your memorialists have not terms to express their surprise and sorrow.

We beg to disavow all intention to offend; or to impute to your honourable committee, or to any member of your house, any desire to do us wrong: secret and interested views unknown to you have suggested this bill: but surely, you will hear your memorialists with candour, and think it more honourable to retract an erroneous and ruinous measure, if you shall perceive it to be so, or even of doubtful consequence, than to persist in its further prosecution.

What then, is the object of this part of the bill? It goes upon the supposition, that your memorialists and other warrantees, not having exactly fulfilled, in all respects, the *settlement* of their land according (to say no more of it) to an obscure passage in the act of 1792, that *therefore* it is fit and just for the state, after a lapse of so many years, receiving our labour, money

and taxes; *now* to scrutinize the *language* of the conditions, and if possible, to exact a *forfeiture* of our estates for mere nonconformity; to take it from us under some expected new judicial construction of those dubious expressions, and sell it over again to a future applicant, who may reap (if he can hold it against us) the fruit of our toil and improvements.

To carry into effect this object, the standing courts of justice are put aside, and a *particular* court is organized with most extraordinary powers; an agent is to be appointed by the governor, no doubt to look after forfeitures, and the attorney general in the *name of the state* is from time to time to bring ejectments against all persons holding under the *particular* warrantees mentioned in the preamble, where in his opinion, they are on a tract forfeited to the state, leaving *other* companies and warrantees free from such prosecutions. What a scene does this open of ruinous litigation to your memorialists, and hundreds of tenants and purchasers under them, and other landholders spread over eight hundred thousand acres of country, and reposing under a belief, that all disputes had ceased from the decree of the supreme court of the United States in 1805? We forbear in this place to indulge reflections upon the evident consequences both to us, to the state, and to its treasury, by the prosecution of the objects contemplated in the bill. The state is to have, not only from time to time, special courts at Sunbury, but even to pledge itself to maintain the suits of all settlers who may prosecute in the same court.

Our paramount wish is to save ourselves from a conflict so dreadful, from effects so disastrous: not that your memorialists *doubt their title*, or that they look with apprehension to the *final issue* of legal coercion: surely we ought to have no fears on that account: but, it is plain to us, if once the contest is begun, in the manner which the bill has proposed, it will be long and ruinous: what remains to us, indeed, we must in that case defend, and we would trust in God, and to the laws for final success: but we rely, in

the first instance, for protection from a majority of the representatives of Pennsylvania: it is not for us to realize, until this measure so fatal to us and the tranquillity of the state is consummated, an apprehension of its adoption: though our bounden duty and interest demand, that we should with earnestness and candour lay before you our reasons against it: for undoubtedly we have more to apprehend from misrepresentation, and misunderstanding of this case, than all beside.

It must be in the recollection of your honourable body, that this bill goes to put suits in prosecution, and if possible, to effect a recovery of our land by the state of Pennsylvania; *because* it may not have been *settled* by us, within the time mentioned in the act of 1792.

Admitting for a moment, that *now*, upon a close and strict interpretation of those conditions, the state *had* a reasonable prospect of *securing a forfeiture* of our land on that account, in the court organised in this bill; is it consistent with equity and justice and policy, (principles which will always govern legislative bodies,) that a law *should* be passed to enable the state to *inflict the forfeiture* upon your memorialists and other warrantees, and those holding under them? Whatever particular settlers, actuated by self-interest, might choose to do, under that law;—enter upon us, and insist for a forfeiture or vacancy, so far as regarded their vacating warrants or intention to settle in opposition to us;—it becomes a mere question of *choice*, with the representatives of the people, whether they will pursue the same course, by enacting a particular law to give form to their proceedings, or *refrain* from a measure so rigid, and leading to evils so certain and extensive.

No *duty* is imposed upon any private man to insist on a *penalty* or *forfeiture*, and courts of equity where they exist, release from them: much less is a great and enlightened people called upon, as a matter of right and duty, to hunt up obsolete laws, and search out for forfeitures under them, to be inflicted by state prosecu-

cutions on individual citizens; and even make *new laws* expressly to get at them.

What if it were believed that we had not in the time prescribed settled our land: and what (to carry it further) if we could say nothing of the obscurity of the law, or urge circumstances in palliation, such as we have before referred to, and all Pennsylvania knows their truth: would it be *requisite* for the state to adopt such measures against us; and thus, because perhaps of a little variation in time or circumstances, to *punish us* with the loss of our whole estate.

If indeed it were admitted that we ought to *suffer* for this supposed delay or omission in regard to some or even all of the lands, *have* not your memorialists been punished *enough*: ought a generous and just people, even if we had been somewhat negligent (though in truth no human efforts could have done more with our means), to desire to carry our punishment beyond its present degree: is it not enough, that we paid to the state above 100,000 dollars, for this property, seventeen years ago, then its full value; and have from that time to this lost the *interest* of so much capital, and the state enjoyed it. Is it nothing that we suffered in the outset a loss of 127 tracts, being 50,800 acres, by want of title in the state to that quantity discovered on resurvey, and in consequence of prior occupancies, for which the state has made us no return. And beside this, will it avail nothing, to excuse us from further loss by forfeiture, that we were compelled in order to procure settlers, (wishing to conform to the law) to *give away* in bounties 103,600 acres beside:—making a clear deduction in the whole, of above *one third part* of our purchase from the state.

Ought it not to shield us in some measure from the rigour of *forfeiture*, that we have expended in *capital* beyond the purchase monies and fees of office, above 400,000 dollars, in populating and improving that part of Pennsylvania, from our private fortunes, which is *wholly lost to us*, with all its interest, amounting to as much more.

Beyond all this, we have paid thousands of dollars into the treasury for taxes, the state thereby admitting our right to these lands; have compromised numerous vexatious claims, and undergone for seventeen years, a series of trouble and disappointment. If it *were* so then, that in regard to a part or the most of these lands, a state informer should be able, after due investigation, to prove they were *not settled in time*; and therefore, *might* be seized by the state as a *forfeit*: will the state of Pennsylvania, can a great and just people, as a matter of *choice*, organize a tribunal to receive such informations; and under such circumstances as we have stated, bring down upon us, a few private citizens, the penalty of our *whole* property: After having received from us, the price in money and improvements twice over, go on to sweep back into its treasury as a *forfeiture* the remnant of our losses: In the event of succeeding in these prosecutions, is it proposed by the promoters of such a bill to retain the purchase money, office fees and taxes we have paid, and to make us no satisfaction for interest and improvements.

But your memorialists forbear these suspicions; enemies or criminals could not expect such injustice, much less a few foreigners, who respecting your government and confiding in your clemency and justice, only ask, that the legislature of Pennsylvania may not *choose* measures of rigour, which it is in their power to refrain from; in a case too, where, if there has been a fault or omission, your memorialists have surely suffered enough, and the state received a *sufficient* satisfaction.

Let it not be said that the court will do us no harm; that the agent and attorney-general may not be rigorous in their prosecutions, or that we can probably ward off the blow, if aimed at us; that the judges and juries will be merciful, and that it is proper to organize the law to reach *other* warrantees. Your memorialists have stated before, what it is they *fear*. It is cost, trouble, litigation, and the sure effect of involving their proper-

ty in dispute; rendering it, while the law exists, and even perhaps for half a century, of no value to them or their heirs.

In regard to other warrantees, we believe that substantially they stand upon the same ground, and that a general law will, as perhaps it ought, be generally executed. Nor ought it to influence your honourable body to pass this bill, that thereby a *state* construction may be given to the law of 1792, merely to bring on a controversy with the federal jurisdiction: that party men or lawyers, or judges have not agreed upon its meaning, can furnish no ground for the bill in question; but rather the contrary. The legislature of Pennsylvania will not expose warrantees and their assigns to state prosecutions for forfeitures, and put all their hopes and the peace of society in jeopardy, merely to *settle*, as it is called, a problematical question in a state court: The only great question which presents itself here is, *ought* these forfeitures, if they exist, to be insisted upon? If they ought not, then indeed would it be a strange resolution to organize the court in question. We trust, after duly weighing what has been offered under *this head* of our memorial, if we could urge nothing else, your honourable body would reject the idea of *state prosecutions* against warrantees, to effect forfeitures for nonsettlement. Surely it is rather better to encourage and quiet them, after what they have done for the state and suffered themselves, than to open upon them an indiscriminate warfare, under the hard pretext of some failure in the time of making settlements.

We have so far appealed against the institution of these penal prosecutions, because of their extreme injustice. Allowing it as CERTAIN that the forfeiture had occurred; we believe a wise and just legislature, having the power to call for forfeitures or not, will never, under these circumstances, choose the side of rigour. Between man and man, the case your memorialists have stated, would have shielded the one from the other in any court of equity: how much more then is this remission to be looked for from the magnanimity.



of a state, deciding upon the abstract justice and *propriety* of exposing its citizens and foreigners to heavy and undeserved penalties.

But should there be any, who might yet desire to pursue the warrantees on the ground of forfeiture, we beg the patience of your body, to the suggestion of some considerations, of a very different, but no less important nature.

And first, where there is so much foundation to question the *justice* of these measures, should it not be well considered before such a flood of prosecutions are authorised, and even required, whether there be a *solid ground* to suppose the forfeitures *can be established*.

Your memorialists have hitherto only admitted their possible liability, in order to avert, if it might be, these prosecutions, by showing that were it certain they must lose their land in the course of them, still a just people and legislature *should* not, in the circumstances of the case, claim the penalty, and especially that they should not create a special court for that very purpose.

But will these courts or the legislature (if it has the wish) be *able* to recover and hold the lands of your memorialists and other warrantees? We cannot believe it is desired; yet if such an intention should anywhere exist, we would submit these ideas for the candid reflection of those we address:

The charge against us and our assigns is, that we did not according to the precise letter of the 9th section of the law of April 3, 1792, make a *settlement* on all or some of the tracts granted to us within two years from the date of our warrants, and that we have no excuse for this omission under the proviso of that act; and therefore our warrants gave no title: If this *be* the case, your memorialists humbly submit, that the same act which contains the power to grant, and declares the conditions, also *prescribes* the *manner in which the conditions shall be taken advantage of* against the warrantee; namely, that in default of such actual settlement, a *new* warrant is to issue to some *actual settler*, reciting the original warrant, and that actual settlement and

residence have not been made in pursuance thereof; and so often as defaults shall be made *for the time and in the manner aforesaid*:

The bill now before your honourable body *departs* from this course of entry and eviction, varies the method of showing a title against the warrantee, namely, an actual settlement and new warrant: it essentially changes the proceeding and *parties* to the question of forfeiture, as contemplated by the law of 1792. In these and many other respects the bill appears to your memorialists to be *ex post facto*, contemplating a *strict exaction* of the forfeiture, and so far pursuing the terms of the law of 1792; but wholly and essentially *departing* from its terms and intent in regard to the *way* and *manner* and *person* who should take advantage of the nonperformance of the warrantee:

And while on this head, your memorialists cannot but deem it a peculiar hardship, as the bill professes to be made to *settle* the title to these lands, that the court should be composed of judges who have formed decided sentiments and even delivered judicial opinions upon the very matter in question; one of them also, having been the advocate against us, and for years an able and zealous counsel for persons who had entered upon our lands under the idea of forfeiture, and paid by the state.

Surely we need not express our private respect for gentlemen of their dignity and character: to the sincerity of their minds and consistency of conduct, we pay due honour; but that these should be selected to decide on the *question of law* between us and the state, so far forth as we may become parties or interested in these prosecutions, fills us with no ordinary apprehension, and affords to us but a slender hope, that decisions under that bill, if against your memorialists, would *settle* their rights. That the state too should make a law in their own case, choose their own courts for trial, and be made plaintiffs, and yet be excused from showing title, and jurors appointed to be taken in the way proposed, and a *general legislative power* vested in the judges by the ninth section of the bill, are matters of which we have reason to complain,

seeing that *we* are expressly named in the preamble of the law, as persons *against* whom these proceedings are designed.

If, however, this court shall be competent, and the method proposed proper; after all, the question recurs: *ought* the legislature to bring the matter of forfeiture again into *revision* after the solemn and satisfactory manner in which it has been settled in the *supreme and circuit courts of the United States*?

Your memorialists know no party; they are foreigners; and unhappy will it be for them and the state, if any feeling or passions of that complexion mingle their influence in this question of their private property.

We beg to inform your honourable body, that our warrants issued prior to August 1793, and that general Wayne's treaty with the Indians was ratified in January 1796. In all the judicial discussions on the subject of this proviso, it had been fully assented to, that from the opening the land office to the conclusion of that treaty warrant-holders were excused from settlement, under the *proviso* of the act. Your memorialists made every possible effort, short of actual settlement, before that war ended; but they could effect none while it lasted: it continued, however, more than two years after our warrants issued, so that the time for settlement *elapsed during the war*, and then the proviso, excusing the war-rantee *during such two years*, it became a question, whether *after* the w. r ended, he was bound within two years from that period, to *settle* his tract, the proviso not so declaring: the act was somewhat obscure, and differences of opinion existed among the state judges: your memorialists, wearied and harassed with entries by persons who pretended to enter under vacating warrants, upon the ground of forfeiture for not settling some tracts within two years *after* the Indian war, caused this question to be brought into the circuit court of the United States in April 1805, and there a case was stated for the determination of all the judges of the supreme court. In February term 1805, the questions embracing the construction of this law were argued at Washington

in the supreme court, by Messrs. E. Tilghman and others for the warrantees, and M'Kean, the attorney general, and W. Tilghman for the state and those who held that the warrantees were bound to settle *after* January 1796. The judges of the supreme court solemnly determined "That a warrantee, who from *April 1793 to the first of January 1796*, was prevented by the enemies of "the United States from making such settlement as the "law required; but who, during *that period* persisted in "his endeavours to make such settlement, is *entitled to hold his land in fee simple*, although *after* the prevention "*ceased* he made no attempt to make such settlement."

This decision settled the point that the warrantee was excused, during the war, using his endeavours; and if it lasted two years, he was not bound afterwards as a matter of compulsion, to settle each tract. Never was a case more solemnly or ably argued, nor decided by judges of greater impartiality and eminence: it was acquiesced in by all parties and their counsel; and the state has not since interfered. The settlers let judgment go by default; and for five years since that decision was delivered, the country has been at peace, and its wish is to be so; except that some few settlers who were evicted are petitioning the state for relief. See 4 Dall. Rep. 393.

It is only now for the first time since then that the question is revived; and revived too not merely for a single settler upon your memorialists, whose claim might be of no great consequence; but if determined otherwise in the court which this bill contemplates, it is designed to sweep from us our property in the face of that decision, which we as foreigners, having a right to trial in that court, considered as *the law of the land*.

Your memorialists most surely may suggest without offence, that the supreme court of the United States, strangers to both parties, and under no kind of influence, possessed of the highest judicial talents and having the case fully and solemnly argued, compose a tribunalevery way qualified, from disinterestedness and

ability, to *settle* this question. Can it be conceived that a more satisfactory decision will take place in the court designated in the bill, and who are to *revise* that determination?

Your memorialists will have good reason to fear their titles must ever remain unsettled, if your honourable body, under all the circumstances stated in this memorial, shall see fit to create a jurisdiction, and even command its officers to prosecute for forfeitures against us. Though it is well known, such prosecutions can only succeed by disregarding the law as held by the Supreme Court of the United States; and hereafter when that court may be applied to by warrantees resisting its executions.

Your memorialists conceived it their duty to make the legislative body acquainted with these judicial proceedings, if it might only be an *inducement*, with other considerations, to reject the bill in question, as far at least as goes to authorise and direct prosecutions for the state against warrantees, on the ground of nonperformance of conditions.

But apart from every consideration of what may be the true meaning of the law of 1792, and even if it were granted that, in strictness, the land should have been settled before, yet as it is most undoubtedly in your *choice* to exact a penalty or not, we believe your honourable body will upon general reasons of equity and consideration for the great losses of your memorialists, and of the great benefits the state has derived from their exertions, most cheerfully refuse your *aid* to any attempt upon the residue of our purchase: surely we and the people in that country should be at rest.

Other considerations of a still more serious nature will naturally press themselves upon the attention of an enlightened assembly, apart from all distinctions, and subtilties, and rigid constructions of laws in their nature penal.

What if after a series of litigation, the state of Pennsylvania should succeed in reaching a part or the whole of our property, notwithstanding the protection

we seem to have under the United States, and which most certainly we can never resign, and what is more to honourable minds, notwithstanding the appeal we make, and the facts we tender, calculated to engage generous and just men in our behalf; would not the voice of mankind still be with us?—We will press this idea no further. Your memorialists believe they address men who will preserve the state of Pennsylvania from the adoption of measures which in regard to us, the world would pronounce *most severe*.

But other and higher consequences will be obvious to your honourable body, if in the course of years, after long and ruinous conflicts, (for surely we cannot yield what we hold by ties so strong,) much, or even *all* of our land should become revested in the state; will its value, after defraying the costs, compensate for the public evils the contest must produce? It is evident the moment this bill passes, near 800,000 acres of your country, now peaceably possessed, and held by warrantees, and which just emerged from the agitation produced by the settlers, would soon become the general scene of sale and improvement—will suddenly be turned to a melancholy scene of dismay and confusion. The forfeiture, if it exists, reaches not only to the warrantee but his assigns, and honest purchasers, who have depended upon his title, more especially after the decision of the supreme court of the United States. Ejectments are to be brought from time to time, and successive courts held at Sunbury, of which this state has had some former experience. Can any human foresight look to the termination of these controversies, or count the evils they must produce upon the temper of the state, its social order, its character at home and abroad? Can it be that Pennsylvania, upon grounds at least so unimportant to its interest, and so questionable in its justice, seek a collision with the general government?

It is in vain that the *title* of your act and its preamble purports to be for the *settlement* of *certain* disputed titles; it is an act, however intended, which will *unsettle*

titles now at rest; no questions remain but with a few persons who desire to close their differences by compromise; but if this act passes, scenes of litigation are to arise between the state and warrantees and their assigns, which in duration and all the evil consequences of lawsuits, will far exceed the miseries which that country has felt from disputes between the warrantee and settler. Your memorialists will be excused, in the minds of your honourable body, from hinting at consequences so obvious: no man should flatter himself that a bill, such as that now before your honourable house *can compose* differences: alternate and varying verdicts and judgments in the different courts of the state and United States, will only cease to keep alive hope and prolong controversy, when your memorialists shall cease to believe in the justice of their claims. And in the *interim*, how fatal must such a state of things be to the interests and happiness of the land where they exist.

To say the state *will* recover and sell again to some new settler, what is it but to prejudge events:—and if recoveries should happen and new purchasers can be got for land thus circumstanced, which is not likely; will they not be in turn liable to dispossession in the state or federal courts at the option of the warrantee. We intreat your honourable body to reject this bill, because it would be unjust, if it could be done, to take the property of warrantees on the ground of forfeiture: our reasons are before you, and let the world judge if we should be so punished.

We pray you to reject this bill because there is really no *ground in law* to dispossess, but the law is in our favour.

We intreat you to reject it, because its adoption will bring more injury with it to Pennsylvania in ten years<sup>2</sup> than all our property could benefit its treasury, if yielded without a struggle: Pennsylvania wants not more *land*: Less does it want a *few tracts*<sup>3</sup> of vacant country wrung from the remains of a ruinous purchase to your memorialists. Pennsylvania wants peace and population.

There is, as your memorialists believe, but one prudent and just course: it is simple, honest, and will be embraced by all parties.

This *bill* has sprung from some *remaining* claims, carrying an appearance of justice with them in regard to *evicted settlers*, or those not yet evicted. A law that shall provide for a *settlement* with those who have not received satisfaction by compromise can take the place of the one now proposed.

If your honourable body, instead of passing an act to open anew the floodgates of contention, would rather publicly relinquish your rights, whatever they may be, when the warrantees shall have agreed with the settlers, a happy turn would be given to this bill: the western representatives then, instead of carrying back with them a law which would spread consternation and discord, will be the acceptable bearers of a pledge securing to the settler, in or out of possession, his long expected recompense; a boon never to be attained whilst these pretensions to our titles are kept in hostile array and all compromise thereby rendered impossible. In conclusion, your memorialists in a case so important to their extended interests, and combining so many questions of law, justice and policy, pray that *time* may be given, by suspending the passage of a law on the subject, to enable all concerned to be heard, and every matter be fully understood, before a *step* is taken which may not be easily retraced. Your honourable body will please to pardon any imperfections in this our memorial, drawn in the utmost haste, but under every feeling of respect and confidence.

Dallas 4<sup>th</sup> vol. p. Notes -

Sumner - p. 166 - 231

- 4<sup>th</sup> vol. p. 193 - 417 vol. 6 - p 267









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